

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1801

Introduced by Assembly Member Campos
(Principal coauthor: Assembly Member Alejo)

February 21, 2012

An act to amend *Section 714 of the Civil Code*, and to amend Section 66014 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 1801, as amended, Campos. Land use: fees.

Existing

(1) *Existing* law requires fees charged by a local agency for specified purposes to not exceed the estimated reasonable cost of providing the service for which the fee is charged, unless a question regarding the amount of the fee charged in excess of this cost is submitted to, and approved by, $\frac{2}{3}$ of the electors.

This bill would ~~prohibit~~ provide that the total amount of fees charged by a local agency ~~from charging a fee for permit for to install a renewable energy system, as defined, that exceeds cannot exceed \$3,000 for a 131-kilowatt commercial system, \$600 for a 15-kilowatt residential system, or the actual cost of issuing the permit providing the service for which the fees are charged.~~ The bill would also prohibit a local agency from calculating a fee for a renewable energy system by utilizing the valuation of the renewable energy system, any costs associated with the installation of the system, or any other costs not directly associated with the costs to issue the permit, and would require the local agency to identify the individual fees assessed on the invoice provided to the applicant.

The bill would additionally prohibit a local agency from charging various other fees based upon the value of the property being improved, or the improvement, materials, or labor costs associated with the improvement.

(2) Existing law prohibits any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property, and any provision of a governing document, as that term is defined, from effectively prohibiting or restricting the installation or use of a solar energy system, except that reasonable restrictions may be imposed on the installation of solar energy systems, as specified.

This bill would prohibit an association, as defined, from charging a fee to review, inspect, recommend, approve, or disapprove any aspect of the installation of a renewable energy system.

(3) The bill would also express a legislative finding and declaration that oversight of permit fees for renewable energy systems is an issue of statewide concern and not a municipal affair and that, therefore, all cities, including charter cities, would be subject to the provisions of the bill.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) The importance of increasing California's renewable energy*
4 *generation was declared with the enactment of a renewable energy*
5 *portfolio standard.*

6 *(b) There is considerable variation in the range of permitting*
7 *fees that are charged among municipalities to install similar*
8 *renewable energy systems.*

9 *(c) Cost and time burdens are a disincentive to the adoption of*
10 *renewable energy, which threatens our state's environmental,*
11 *economic, social, and national security goals.*

12 *(d) To meet the state's goal for maximizing the deployment of*
13 *renewable energy, there is a need for certainty regarding the*
14 *associated fees that may be assessed for permitting renewable*
15 *energy systems.*

1 (e) Fees levied to ensure the appropriate installation, utilization,
2 and maintenance of renewable energy systems should not exceed
3 the actual costs of rendering those services.

4 (f) Oversight of local agency fees is a matter of statewide interest
5 and concern. Therefore, the Legislature finds and declares that
6 oversight of permit fees for renewable energy systems is a matter
7 of statewide concern and not a municipal affair, as that term is
8 used in Section 5 of Article XI of the California Constitution.
9 Therefore, this act shall apply to all cities, including charter cities.

10 SEC. 2. Section 714 of the Civil Code is amended to read:

11 714. (a) Any covenant, restriction, or condition contained in
12 any deed, contract, security instrument, or other instrument
13 affecting the transfer or sale of, or any interest in, real property,
14 and any provision of a governing document, as defined in
15 subdivision (j) of Section 1351, that effectively prohibits or restricts
16 the installation or use of a solar energy system is void and
17 unenforceable.

18 (b) (1) This section ~~does~~ shall not apply to provisions that
19 impose reasonable restrictions on solar energy systems. However,
20 it is the policy of the state to promote and encourage the use of
21 solar energy systems and to remove obstacles thereto. Accordingly,
22 reasonable restrictions on a solar energy system are those
23 restrictions that do not significantly increase the cost of the system
24 or significantly decrease its efficiency or specified performance,
25 or that allow for an alternative system of comparable cost,
26 efficiency, and energy conservation benefits.

27 (2) Notwithstanding paragraph (1), an association, as defined
28 by subdivision (a) of Section 1531, shall not charge a fee to review,
29 inspect, recommend, approve, or disapprove any aspect of the
30 installation of a renewable energy system.

31 (c) (1) A solar energy system shall meet applicable health and
32 safety standards and requirements imposed by state and local
33 permitting authorities.

34 (2) A solar energy system for heating water shall be certified
35 by the Solar Rating Certification Corporation (SRCC) or other
36 nationally recognized certification agencies. SRCC is a nonprofit
37 third party supported by the United States Department of Energy.
38 The certification shall be for the entire solar energy system and
39 installation.

(3) A solar energy system for producing electricity shall also meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(d) For the purposes of this section:

(1) (A) For solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, “significantly” means an amount exceeding 20 percent of the cost of the system or decreasing the efficiency of the solar energy system by an amount exceeding 20 percent, as originally specified and proposed.

(B) For photovoltaic systems that comply with state and federal law, “significantly” means an amount not to exceed two thousand dollars (\$2,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 20 percent as originally specified and proposed.

(2) “Solar energy system” has the same meaning as defined in paragraphs (1) and (2) of subdivision (a) of Section 801.5.

(e) (1) Whenever approval is required for the installation or use of a solar energy system, the application for approval shall be processed and approved by the appropriate approving entity in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed.

(2) For an approving entity that is a homeowners’ association, as defined in subdivision (a) of Section 1351, and that is not a public entity, both of the following shall apply:

(A) The approval or denial of an application shall be in writing.

(B) If an application is not denied in writing within 60 days from the date of receipt of the application, the application shall be deemed approved, unless that delay is the result of a reasonable request for additional information.

(f) Any entity, other than a public entity, that willfully violates this section shall be liable to the applicant or other party for actual damages occasioned thereby, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

1 (g) In any action to enforce compliance with this section, the
2 prevailing party shall be awarded reasonable attorney's fees.

3 (h) (1) A public entity that fails to comply with this section
4 may not receive funds from a state-sponsored grant or loan program
5 for solar energy. A public entity shall certify its compliance with
6 the requirements of this section when applying for funds from a
7 state-sponsored grant or loan program.

8 (2) A local public entity ~~may~~ *shall* not exempt residents in its
9 jurisdiction from the requirements of this section.

10 ~~SECTION 4.~~

11 *SEC. 3.* Section 66014 of the Government Code is amended
12 to read:

13 66014. (a) (1) Notwithstanding any other law, when a local
14 agency charges fees for zoning variances; zoning changes; use
15 permits; building inspections; building permits; filing and
16 processing applications and petitions filed with the local agency
17 formation commission or conducting preliminary proceedings or
18 proceedings under the Cortese-Knox-Hertzberg Local Government
19 Reorganization Act of 2000, Division 3 (commencing with Section
20 56000) of Title 5; the processing of maps under the Subdivision
21 Map Act, Division 2 (commencing with Section 66410) of Title
22 7; or planning services under the authority of Chapter 3
23 (commencing with Section 65100) of Division 1 of Title 7 or under
24 any other authority; those fees shall not exceed the estimated
25 reasonable cost of providing the service for which the fee is
26 charged, unless a question regarding the amount of the fee charged
27 in excess of the estimated reasonable cost of providing the services
28 or materials is submitted to, and approved by, a popular vote of
29 two-thirds of those electors voting on the issue.

30 (2) (A) Notwithstanding paragraph (1), *the total amount of fees*
31 *charged by a local agency to install a renewable energy system*
32 ~~shall not charge a fee for a renewable energy system permit that~~
33 ~~exceeds~~ *exceed three thousand dollars (\$3,000) for a commercial*
34 *system that does not exceed 131 kilowatts, six hundred dollars*
35 *(\$600) for a residential system that does not exceed 15 kilowatts,*
36 *or the actual cost of providing the service for which the fees are*
37 ~~charged of issuing the permit. The total amount of fees charged~~
38 *by a local agency to install a commercial renewable energy system*
39 *that exceeds 131 kilowatts or a residential renewable energy system*

1 *that exceeds 15 kilowatts shall not exceed the actual cost of*
2 *providing the service for which the fees are charged.*

3 ~~(B) “Renewable energy” means either of the following:~~

4 ~~(i) A device or technology that conserves or produces heat,~~
5 ~~processes heat, space heating, water heating, steam, space cooling,~~
6 ~~refrigeration, mechanical energy, electricity, or energy in any form~~
7 ~~convertible to these uses, that does not expend or use conventional~~
8 ~~energy fuels (oil, gasoline, or natural gas), and that uses biomass,~~
9 ~~solar thermal, photovoltaic, wind, or geothermal electrical~~
10 ~~generation technologies.~~

11 ~~(ii) Ultralow-emission equipment for energy generation based~~
12 ~~on thermal energy systems such as natural gas turbines and fuel~~
13 ~~cells.~~

14 *(B) For purposes of this paragraph, the following terms have*
15 *the following meanings:*

16 *(i) “Renewable energy system” means any device or*
17 *combination of devices that uses biomass, solar thermal,*
18 *photovoltaic, wind, geothermal, fuel cells using renewable fuels,*
19 *digester gas, municipal solid waste conversion, or landfill gas.*

20 *(ii) “Residential system” means any renewable energy system*
21 *that is installed on a single-family home.*

22 *(iii) “Commercial system” means any renewable energy system*
23 *that is installed on commercial property.*

24 *(C) Any fee charged pursuant to this paragraph shall be in*
25 *addition to a fee charged pursuant to Section 18931.6 of the Health*
26 *and Safety Code.*

27 *(D) A local agency shall not base the calculation of a fee*
28 *charged pursuant to this paragraph on the valuation of the*
29 *renewable energy system, any costs associated with the installation*
30 *of the renewable energy system, or any other factor not directly*
31 *associated with the cost to issue the permit.*

32 *(E) A local agency shall separately identify each fee assessed*
33 *for the installation of a renewable energy system on the invoice*
34 *provided to the applicant.*

35 *(b) A local agency shall not base the calculation of a fee charged*
36 *pursuant to paragraph (1) of subdivision (a) on the valuation of*
37 *the property on which the improvement is planned, or the*
38 *improvement, materials, or labor costs associated with the*
39 *improvement.*

40 ~~(b)~~

1 (c) The fees charged pursuant to subdivision (a) may include
2 the costs reasonably necessary to prepare and revise the plans and
3 policies that a local agency is required to adopt before it can make
4 any necessary findings and determinations.

5 ~~(e)~~

6 (d) Any judicial action or proceeding to attack, review, set aside,
7 void, or annul the ordinance, resolution, or motion authorizing the
8 charge of a fee subject to this section shall be brought pursuant to
9 Section 66022.

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